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SENATE JUDICIARY
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Re: SB 236, Capital Punishment

Senators, Members of the Senate Judiciary Committee: This letter summarizes my lengthy memorandum on the history of capital punishment, the moral and ethical questions raised by capital punishment, and the current debate about its effectiveness.

The Primary Opposition View: When we execute someone, we deny him human dignity and we deny him the opportunity for repentance and redemption. We therefore act as only God may act. It is not only the Fifth/Sixth Commandment that we violate when we impose the death penalty. We violate the First.

History: During the first three centuries closest to Christ's teachings, Christians declined to act as judges, executioners, and soldiers. "Once Christianity had become the state religion, the imperial values articulated in Roman law tended to overwhelm gospel values." As the state identified itself with the Church, the death penalty received religious sanction.

Thomas Aquinas: Thomas Aquinas came from the nobility, trained in arms and state-craft. Aquinas identified with the state at the high point of the Counter-reformation. He argued that society may cure itself of the heretic/criminal as the body cures itself of a gangrenous limb. His argument is immoral in today's context because he subordinated the individual to the state and denied the criminal his humanity.

Retribution: Killing a murderer is a retributive response, not the *necessary* retributive response. More important, we only kill strangers. Rather than justifying executing a criminal because he committed a particular crime, we kill particular people—those we consider to be outsiders, so retribution fails as a justification for the death penalty.

Deterrence: Evidence for deterrence is only theoretical. To test the theory, we must execute prisoners who we presently consider not eligible for death. More important, the studies that see a link between executions and reduced murder rates also see a link between executions and increased murder rates in Montana. It is generally accepted that the death penalty plays no measurable role in preventing murders in prison.

Safety: If we kill a murderer, he will not kill again. True but we do not know with confidence whether he will kill again or whether he will contribute to society.

Errors: We know that we have executed the innocent. Because, according to FBI statistics, 1 in 3 eyewitness identifications are wrong, we have a substantial chance of executing an innocent person. DNA identification has not changed this because DNA evidence is not available in every case and because DNA evidence is being used improperly by prosecutors in more cases.